
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
MAR 25 2008

CLERK OF SUPREME COURT
STATE OF WASHINGTON

JOSIE ARMANTROUT, personal representative of the Estate of
KRISTEN ARMANTROUT; JOSIE ARMANTROUT and WARREN
ARMANTROUT, husband and wife, and the marital community
composed thereof,

Plaintiffs/Petitioners,

vs.

ROBERT CARLSON, M.D. and JANE DOE CARLSON, husband and
wife, and the marital community composed thereof; and CASCADE
ORTHOPAEDICS, a partnership; and/or JOHN DOES 1-100, partners
therein,

Defendants/Respondents.

WASHINGTON STATE TRIAL LAWYERS
ASSOCIATION FOUNDATION
AMICUS CURIAE MEMORANDUM IN SUPPORT OF REVIEW

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On Behalf of
Washington State Trial Lawyers Association Foundation

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Trial Lawyers Association Foundation (WSTLA Foundation) is a not-for-profit corporation organized under the laws of the State of Washington, and a supporting organization of the Washington State Trial Lawyers Association (WSTLA). WSTLA Foundation, which now operates the amicus curiae program formerly operated by WSTLA, has an interest in the rights of injured persons seeking legal redress, including an interest in the proper interpretation of the wrongful death statutes, RCW 4.20.010-.020.

II. BACKGROUND

Josie and Warren Todd Armantrout (Armantrouts) brought this action under Washington's wrongful death statutes, RCW 4.20.010-.020 for the death of their 18-year old daughter, Kristen Armantrout (Kristen or decedent).¹ They claimed their daughter's death was due to the negligence of Cascade Orthopaedics (and others). Armantrouts further contended that they were entitled to recover under these statutes because, as parents, they were "dependent upon the deceased person for support," as required by RCW 4.20.020.

At trial, Armantrouts sought to establish their dependency on Kristen for support based upon her monetary contributions *and* provision of services to them which had an established economic value (in kind support), along with proof of their need for the support. The trial court

¹ The current versions of RCW 4.20.010 and RCW 4.20.020 are reproduced in the Appendix to this amicus curiae memorandum.

permitted evidence regarding both cash and in kind support. See Armantrouts Ans. to Pet. for Rev. at 2-7. The jury instruction on this issue provided in pertinent part:

In determining whether Josie and Todd Armantrout were substantially financially dependent on Kristen, you should consider the extent of Kristen's financial contributions to her parents and whether or not such support was likely to continue for a period of time. The support may include money, services, or other material benefits, but may not include everyday services a child would routinely provide her parents. You may not consider emotional support Kristen may have provided her parents.

Substantial financial dependence may be partial, but must be based on current financial contributions, not the promise of future contributions or services.

Court Instruction No. 14 (CP 92)² The jury determined that Cascade was negligent, that Armantrouts were "substantially financially dependent on Kristen for support," and awarded damages for her wrongful death. See Special Verdict Form (CP 100-102)

Cascade appealed, and the Court of Appeals, Division I reversed, concluding that the jury was erroneously instructed on what may be considered when determining whether Armantrouts were dependent upon Kristen for support. See Armantrout v. Carlson, 141 Wn.App. 716, 720, 170 P.3d 1218 (2007). The court held that proof of dependency was limited to decedent's monetary contributions and could not be based upon in kind support. Id. at 726-32. In reaching this result, it concluded that "Washington cases have never suggested that financial support could

² The full text of Court Instruction No. 14 is reproduced in the Appendix to this amicus curiae memorandum.

include the types of services the Armantrouts received from their daughter.” *Id.* at 728. The court also rejected Armantrouts’ argument that RCW 4.20.020 must be given a liberal construction, holding “[w]e only liberally construe these remedial statutes once the proper beneficiaries have been determined.” *Id.* at 727 (footnote omitted); Armantrouts Br. at 12-13. Armantrouts now seek review before this Court.

III. ISSUE PRESENTED

Under RCW 4.20.020, may a second-tier beneficiary prove that he or she was “dependent upon the deceased person for support” with evidence that the decedent provided services of economic value, or is evidence of support limited to monetary contributions?

IV. SUMMARY

Review is required in this case because this Court has yet to expressly decide whether dependency can be established under RCW 4.20.020 by proof the decedent provided the second-tier beneficiary with services having substantial economic value. Moreover, review is necessary to resolve confusion in the case law regarding whether, in answering the issue presented, the phrase “dependent upon the deceased person for support” is to be strictly or liberally construed. These are matters of substantial public interest. See RAP 13.4(b)(4).

V. ARGUMENT IN SUPPORT OF REVIEW

The issue of whether second-tier beneficiaries under RCW 4.20.020 may prove they were “dependent upon the deceased person for support” (dependent for support) by evidence the decedent provided services having substantial economic value is one of first impression in

this Court. See Armantrout Br. at 1. This question has not been specifically addressed in cases involving interpretation of other past or present wrongful death statutes with similar dependency requirements. The focus to date has been on *monetary contributions* by a decedent, and whether they were substantial enough to at least create a question of fact regarding dependency. See e.g. Bortle v. Northern Pac. R. Co., 60 Wash. 552, 556, 111 Pac. 780 (1910) (interpreting Rem. & Bal. Code §194, predecessor to RCW 4.20.060, and requiring “a substantial need on one side and a substantial financial recognition on the other”); Mitchell v. Rice, 183 Wash. 402, 407, 48 P.2d 949 (1935) (interpreting three wrongful death statutes including Rem. Rev. Stat. §183-1, predecessor to RCW 4.20.020, and re-affirming substantial dependency requirement).

In two cases, evidence of in kind support was presented on the issue of dependency, but in each instance the appellate court did not expressly rule on whether this type of contribution is within the meaning of the undefined term “support” in the governing statute. See Cook v. Rafferty, 200 Wash. 234, 239-40, 93 P.2d 376 (1939) (affirming damage award to parents for adult daughter’s death, and upholding dependency finding based on unspecified contributions to the parents’ household and care of parents); Masunaga v. Gapasin, 57 Wn.App. 624, 627-31, 790 P.2d 171 (interpreting “dependent for support” under RCW 4.24.010, and concluding that decedent’s provision of services to parents insufficient

because, among other reasons, there was no evidence the parents were dependent upon these services), *review denied*, 115 Wn.2d 1012 (1990).³

Unquestionably, relevant case law addresses the notion of dependent for support in terms of substantial *financial* dependence. See e.g. Bortle, 60 Wash. at 556 (“substantial financial recognition”); Cook, 200 Wash. at 240 (“pecuniary loss”); Masunaga, 57 Wn.App. at 628 (“financial dependence”); see also Philippides v. Bernard, 151 Wn.2d 376, 386, 88 P.3d 939 (2004) (interpreting RCW 4.24.010 as requiring “financial dependence”). However, this begs the question of whether proof of financial dependence is limited to monetary contributions under RCW 4.20.020, and similarly-worded statutes. In other words, is a decedent who pays cash or writes a check for necessary services for the beneficiary contemplated by the statute, while a decedent who provides the same services directly falls outside the ambit of the statute? This question remains unanswered, and is one of substantial public interest under RAP 13.4(b)(4). It simply is not enough to say that “Washington cases have never suggested that financial support could include the types of services the Armantrouts received from their daughter.” Armantrout, 141 Wn.App. at 728.

³ Armantrouts argue the Court of Appeals opinion below is in conflict with Cook, because in Cook the Court considered the care provided the parents in upholding the verdict. See Armantrouts Pet. for Rev. at 8-9; see also RAP 13.4(b)(1). Similarly, they argue Masunaga recognizes dependency may be based on in kind support. See Armantrouts Pet. for Rev. at 15.

There is a second, related reason why review should be granted in this case. The Court of Appeals' analysis of this question of first impression may have been skewed by use of the wrong rule of statutory construction. Relying on its opinion in Tait v. Wahl, 97 Wn.App. 765, 770-71, 987 P.2d 127 (1999), *review denied*, 140 Wn.2d 1015 (2000), the court observed early in its analysis of the dependency requirement that:

Wrongful death actions in Washington are strictly statutory. We only liberally construe these remedial statutes once the proper beneficiaries have been determined.

Armantrout at 727 (footnotes omitted).

This view is traceable to earlier Court of Appeals decisions involving wrongful death statutes, including Masunaga, 57 Wn.App. at 631. Ultimately, this line of cases relies upon the pronouncement of this Court in Whittlesey v. Seattle, 94 Wash. 645, 647, 163 Pac. 193 (1917), which strictly construed Rem. Code §183 in holding a widower could not recover for wrongful death when the statute only provided widows with a right of recovery. See Masunaga at 631 (citing Whittlesey).

The problem is that serious doubt exists whether the approach announced in Whittlesey remains controlling today, particularly with respect to construing the dependent for support requirement. First, in two cases post-Whittlesey this Court favored liberal construction of dependent for support requirements in wrongful death statutes. In Mitchell, the Court noted:

[W]e must not lose sight of the fact that the statute upon which the right of action is based is remedial in character.

It creates a right of action not existing at common law and should not, in its application, be so limited by construction as to partially defeat its purpose.'

183 Wash. at 407. In Cook, the Court observed: "Rem. Rev. Stat., §§183, 183-1 and 194 [P.C. §§8259, 8260, 8275], being remedial in their nature, are liberally construed." 200 Wash. at 240.

More recently, in Armijo v. Wesselius, 73 Wn.2d 716, 719, 720, 440 P.2d 471 (1968), in resolving whether an illegitimate child qualified as a wrongful death beneficiary under RCW 4.20.020, the Court rejected application of the strict construction principle forwarded in Whittlesey, in favor of a process of "weighing and balancing competing values," coupled with "common-sense humanity." In so doing, it quoted a familiar scholarly treatise on statutory construction regarding the proper lens for interpreting wrongful death statutes:

[M]any of the decisions in the past [construing wrongful death statutes], and a few of the later ones as well, have crippled the operation of this legislation by employing a narrow construction on the basis that these statutes are in derogation of the common law. However, it may now safely be asserted that the better and modern authorities are in agreement that the objectives and spirit of this legislation should not be thwarted by a technical application.

Id. at 720 (quoting 3 J. Sutherland, Statutory Construction, § 7205 (3d ed. 1943)); see also Klossner v. San Juan County, 93 Wn.2d 42, 605 P.2d 330 (1980) (recognizing rule of liberal construction of wrongful death statutes; majority and dissent).

At the very least, there is confusion as to the appropriate rule of construction that should inform the analysis of whether dependency under

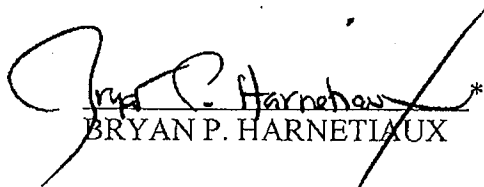
RCW 4.20.020 includes in kind support. The rule of construction applied will likely influence resolution of this legal issue. Clearing up the uncertainty surrounding the appropriate rule of construction to be applied in resolving the substantive question presented is, itself, a matter of substantial public interest. See RAP 13.4(b)(4).

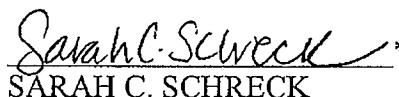
VI. CONCLUSION

The Court should grant review in this case because the meaning of dependent for support is an issue of substantial public interest under RAP 13.4(b)(4).

DATED this 17th day of March, 2008.

**FILED AS ATTACHMENT
TO E-MAIL**


BRYAN P. HARNETIAUX


SARAH C. SCHRECK

On Behalf of WSTLA Foundation

*Document to be transmitted for filing by e-mail; signed original retained by counsel.

APPENDIX

RCW 4.20.010

Wrongful death — Right of action.

When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony.

[1917 c 123 § 1; RRS § 183. FORMER PARTS OF SECTION: 1917 c 123 § 3 now codified as RCW 4.20.005. Prior: 1909 c 129 § 1; Code 1881 § 8; 1875 p 4 § 4; 1854 p 220 § 496.]

RCW 4.20.020

Wrongful death — Beneficiaries of action.

Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife, husband, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just.

[2007 c 156 § 29; 1985 c 139 § 1; 1973 1st ex.s. c 154 § 2; 1917 c 123 § 2; RRS § 183-1.]

INSTRUCTION NO. 14

The plaintiff has the burden of proving that Kristen Armantrout's mother and father were substantially financially dependent upon her for support. Substantial financial dependence requires a showing of a need or necessity for support on the part of the parents and an agreement by Kristin to provide such support. In determining whether Josie and Todd Armantrout were substantially financially dependent on Kristen, you should consider the extent of Kristen's financial contributions to her parents and whether or not such support was likely to continue for a period of time. The support may include money, services, or other material benefits, but may not include everyday services a child would routinely provide her parents. You may not consider emotional support Kristin may have provided her parents.

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Dear Clerk:

Attached please find in PDF form the letter request for amicus curiae status and proposed amicus curiae memorandum. As indicated in the request, service is made by email per arrangement.

Please acknowledge receipt.

Respectfully submitted,

Bryan Harnetiaux
WSBA #5169
On behalf of WSTLA Foundation

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